THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS.19911 AND 19940 OF 2006

COMMON ORDER: (Per TCSR,J)

Inasmuch as these two writ petitions emanate from the order dated 06.07.2006 passed in L.G.C. No.43 of 2002, they can be disposed of together.

The unsuccessful fourth respondent is the writ petitioner in W.P. No.19911 of 2006 and the unsuccessful first respondent is the writ petitioner in the other W.P.No.19940 of 2006. The respondents 2 to 6 in W.P. No.19911 of 2006 and the respondents 1 to 5 in the other writ petition are the applicants who filed L.G.C. No.43 of 2002 against as many as 9 respondents. The other respondents who have not joined in the writ petitions have been arrayed as respondents. After a full-fledged enquiry, the learned Special Court allowed the application. Assailing the said Judgment dated 06.07.2006 passed in L.G.C. No.43 of 2002, these two writ petitions have been filed, as aforesaid.

The case of the applicants in brief is thus: The land in dispute admeasuring 24 acres covered by survey numbers 417/1, 425, 426 and 427 situate in Bommaraspet village, Shameerpet Mandal, Ranga Reddy District, originally belonged to R.Susheela Bai, the pattadar thereof. The first applicant purchased an extent of Acs.2.30 guntas out of the said land under a registered sale deed dated 22.06.1983; the second applicant purchased an extent of Acs.2.25 guntas under a registered sale dated 22.06.1983; and one Yelamanchali Narmada Bai, the wife of the third applicant and mother of the applicants 4 and 5, purchased an extent of Acs.2.24 guntas under a registered sale deed dated

21.06.1983. The said Yelamanchali Narmada Bai died on 29.04.1985 leaving the applicants 3, 4 and 5 as her successors-in-interest. The applicants applied for mutation of their names in the revenue records. The Mandal Revenue Officer under the A.P. R.I.L. and Pattadar Pass Books Act, 1971 by his order dated 02.06.1989 directed the names of the applicants to be mutated in the revenue records. Since the date of purchase, all the applicants have been in possession and enjoyment of their respective properties till the land was grabbed by the respondents 1 to 9 in the month of October, 2001. The father of respondents 5 to 8 by name K.Chandraiah @ D.Chandra Reddy, the alleged protective tenant, illegally grabbed the land and sold the same to the fourth respondent who subsequently inducted the respondents 1 to 3 and 9 in the property in dispute. The respondents 1 to 9 also got their names entered in the pahanies for the years 1998-1999 and 1999-2000 as pattadars and possessors of the land with the connivance of the Village Assistant so as to grab the land.

The case of the first respondent was that he purchased Acs.3.00 of land in survey number 417/1 from the original pattadars and possessors K.Indira Bai, N.Narasimha Reddy and N.Srinivasa Reddy under a registered sale deed dated 06.07.1990. The names of the first respondent's vendors were entered in all the revenue records and they paid the revenue taxes to the concerned. After the said purchase, his name was mutated in the revenue records and issued pattadar pass book and title deed pass book in his name. In addition to the sale deed the first respondent and his vendors having been in continuous possession and enjoyment openly and publicly for over the statutory period he has become owner of the land and the claim of the applicants was barred by limitation.

The case of the fourth respondent was that he purchased the land admeasuring Acs.8.00 covered by survey number 417/1, Acs.8.05 guntas covered by survey number 421, Acs.4.16 guntas covered by survey number 426 and Acs.4.19 guntas in survey number 427 totally

admeasuring Acs.25.00 of land under registered sale deeds dated 11.05.1992 and 12.05.1992 respectively from K.Chandraiah. Possession was delivered to her under the sale deeds and she has been in peaceful possession and enjoyment of the same since then. Her vendor was a protected tenant and later ownership rights were conferred upon him under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for brevity 'the Act'). Even if Section 38-E certificate was cancelled, she claimed that the protected tenancy rights would subsist and the land holder was not entitled to sell the lands to third parties. The sale deeds thus executed in favour of the applicants were null and void and they did not confer any rights in favour of the applicants.

The right to file counter on behalf of the respondents 5 to 8 was forfeited.

On the above pleadings, the learned Special Court framed the following issues for trial:

1) Whether the applicants are the owners of the application schedule property?
2) Whether the rival title set up by the respondents is true, valid and binding on the applicants?
3) Whether the applicants are entitled for any compensation and profits?
4) Whether the respondents are land grabbers within the meaning of Act XII of 1982?
5) To what relief?

During the course of enquiry two witnesses were examined on the side of the applicants and Exs.A.1 to A.23 were got marked. Two witnesses were examined on the side of the respondents and Exs.B.1 to B.13 were got marked. As aforesaid, the learned Special Court held that the applicants established their claim over the land in dispute and the respondents were the grabbers.

Sri K.Raghuveer Reddy, learned counsel appearing for the writ petitioners, represents that the name of the vendor of the writ petitioners since mentioned in the register of tenancies notwithstanding the fact that

Section 38-E certificate was cancelled later, they continue to be the tenants and that any alienation made by the vendor of the applicants contrary to the provisions of the Tenancy Act are hit and are void transactions.

Per contra, Sri V.L.N.G.K. Murthy, learned counsel appearing for the contesting respondents/applicants, represents that since the Joint Collector by his proceedings set aside the orders of the Revenue Divisional Officer granting 38-E certificate to the writ petitioners and remitted the matter for fresh enquiry and as they failed to pursue their application and allowed it to be dismissed, they cannot claim that they are the tenants; that even if the land holder sold the property in favour of the applicants without first offering it for sale to the tenants who are in occupation, the transactions will not become void and at best they are voidable; since the vendors of the respondents failed to assail those transactions, the writ petitioners cannot now impugn the said transactions; and that the alienations made in favour of the writ petitioners and other respondents are not valid since even assuming that their vendor was the tenant, he had no right to alienate the lands.

In view of the rival contentions, the points that arise for our determination are:

1) Whether the alienations made in favour of the contesting respondents/applicants are void?
2) Whether the alienations made in favour of the writ petitioners and other respondents are valid?
3) Whether the writ petitioners and others respondents are grabbers?

The land grabbing case was filed against as many as 9 respondents. Respondents 5 to 8 are the sons of Kondapuram Chandraiah @ D.Chandra Reddy. Therefore, respondents 1 to 4 and 9 are the contesting respondents. Since the third respondent died, respondents 10 and 11 were added as his legal representatives. Respondents 1 and 4 alone are the writ petitioners. Therefore, the case of respondents 2, 3 and 9 need not be considered. In fact, respondents

1and 4 alone deposed before the Special Court.

While it is the case of the applicants that the land in dispute was originally belonged to Smt.R.Susheela Bai, the pattadar thereof and they purchased from her under three registered sale deeds; the respondents 1and 4 set up individual and inconsistent cases. While it is the case of the first respondent that he purchased Acs.3.00 of land in survey number 417/1 from the original pattadars and possessors K.Indira Bai, N.Narasimha Reddy and N.Srinivasa Reddy under a registered sale deed dated 06.07.1990; it is the case of the fourth respondent that one K.Chandraiah @ D.Chandra Reddy was a protected tenant, from whom the respondents and some of the respondents' vendors purchased the property under registered sale deeds and thus they are the owners and possessors thereof.

The land in dispute is in an extent of Acs.24.00 covered by survey numbers 417/1, 425, 426 and 427 situate in Bommaraspet village, Shameerpet Mandal, Ranga Reddy District. The entire land in dispute is covered by four common boundaries. Although the first respondent denied the title of the vendor of the applicants by means of general denial there has been no gainsaying of the title and ownership of Smt.R.Susheela Bai the vendor of the applicants by the fourth respondent. Smt.R.Susheela Bai was examined during the course of enquiry before the Special Court as P.W.2. She asserted that she was the owner of the land having got the same towards her maintenance by her husband's brother and by her mother-in-law. Earlier, she and one Smt.G.Vijaya filed an appeal before the Joint Collector, Ranga Reddy District in Case No.B4/9678/75 assailing the order of the Tribunal dated 12.05.1975 made in B/196/LRE/75 whereunder ownership certificate under Section 38-E of the Act was granted. That appeal was allowed on 27.03.1979 by the learned Joint Collector and the ownership certificate issued in favour of K.Chandraiah and three others was cancelled and the matter was remanded to the Tribunal for conducting fresh enquiry. Ex.A.23 is the certified copy of the said order. What happened after the

remand is not discernible either from documentary or oral evidence. At any rate, it is not the case of the writ petitioners that on such remand, the Tribunal conducted further enquiry and passed an order granting ownership certificate in favour of the protected tenant. But the fact remains that the ownership certificate granted in favour of K.Chandraiah and others was cancelled under Ex.A.23 order. P.W.2 proved Exs.A.1 to A.3 sale deeds executed by her in favour of the applicants whereunder she conveyed title to them. After such purchase, the applicants seemed to have applied to the Mandal Revenue Officer, Shameerpet Mandal, for mutation of their names in the revenue records and the Mandal Revenue Officer directed the mutation of their names accordingly. Exs.A.20, A.21 and A.22 orders show that the Mandal Revenue Officer by his order dated 02.06.1989 directed mutation of the names of the applicants. Thus, the documentary evidence in Exs.A.1 to A.3 and A.20, A.21, A.22 and A.23 coupled with the oral evidence of P.W.2 *prima facie* clearly show the title over the land in dispute in favour of the applicants.

The case of the first respondent was that he purchased 3 acres of land covered by survey number 417/1 from Smt.K.Indira Bai, N.Narasimha Reddy and N.Srinivasa Reddy under Ex.B.1 registered sale deed dated 06.07.1990. Ex.B.1 does not speak anything about the title of the vendors. No link document has been filed tracing the title of the vendors. Nor it is the case of the first respondent that the said vendors are the protected tenants of the land in dispute. R.W.1 in his evidence introduced Exs.B.2 to B.5. Ex.B.2 is the duplicate pattadar passbook, Ex.B.3 is the duplicate title deed passbook, Ex.B.4 is the order of the Mandal Revenue Officer and Ex.B.5 is a bunch of land revenue receipts. Under Ex.B.4 proceedings, the name of the first respondent was directed to be mutated in substitution of the name of Smt.K.Indira Bai. Exs.B.2 and B.3 duplicate passbook and title deed were obviously issued during the year 2005. How these documents came to be issued without noticing Exs.A.20, A.21 and A.22 is the moot question. Apart from that, how K.Indira Bail claims title over the said

land is yet another important question. When it is the case of the fourth respondent that K.Chandraiah @ D.Chandra Reddy was the protected tenant from whom he is claiming title, the first respondent is not tracing his title through the said protected tenant. Further more the 3 acres of land covered by survey number 417/1 subject matter of sale in favour of the first respondent is also the subject matter of sale in favour of the fourth respondent. Thus there appears a conflict of interest in between the respondents 1 and 4.

The fourth respondent claims to have purchased the property under Ex.B.6 and Ex.B.8 registered sale deeds dated 11.05.1992 and 12.05.1992 respectively and Exs.B.7 and B.9 rectification deeds from K.Chandraiah. Under Ex.B.6 the fourth respondent purchased 15 acres of land covered by survey numbers 417/1, 421, 426 and 427. Under Ex.B.8 he purchased 10 acres of land covered by the same survey numbers viz. 417/1, 421, 426 and 427 in an aggregate of 25 acres of land. There is nothing left to be purchased by the first respondent in the land covered by Sy.No.417/1. Inasmuch as the sale in favour of the first respondent is earlier the fourth respondent could not have purchased the total extent of land covered by Sy.No.417/1. Besides sale deeds and rectification deeds, the fourth respondent is relying upon Ex.B.10 original electricity slab passbook, Ex.B.11 receipt showing payment of electricity charges, Ex.B.12 true copy of P.T. Register and Ex.B.13 true extract of pahanies for 1956-57, 1957-58, 1958-59, 1959-60, 1969-70, 1973-74, 1983-84. The electricity slab passbook and receipts showing payment of electricity charges will not help in proving title over the land in dispute. Ex.B.13 true extract of pahanies shows the names of Pedda Gopala Rao, Tulasamma and Sudharshan Rao as owners of the lands covered by survey numbers 417/A, 421, 426 and 427. The names of Kondapuram Chandraiah, Venkatramaiah and Nomula Latchaiah are shown as cultivators.

When obviously the land in dispute is covered by survey numbers 417/1, 425, 426 and 427, Ex.B.13 pahanies pertain to survey

numbers 417/A, 421, 426 and 427. The land covered by survey number 421 is not included in the land in dispute. Pahanies obviously do not relate to survey number 425. At any rate, the land covered by survey numbers 417/1, 425 and 426 are not obviously covered by Ex.B.12 permanent register of tenancy. Yet in Ex.B.13 pahanies the names of the pattadars are shown as Venugopala Rao, Sudharshan Rao and Tulasamma. The name of Smt.Indira Bai the vendor of the first respondent has not been shown in Ex.B.13 bunch of pahanies. That takes away the claim of the first respondent that his vendor was the original owner and pattadar of the land covered by Sy.No.417/1. Exs.B.2 and B.3 being the duplicate pass books and for the reasons discussed herein above cannot be considered. There remains Ex.B.4 alone. This document shows that the name of the first respondent has been mutated in substitution of the name of Smt.Indira Bai as the pattadar. It is not known how her name for the first time is shown in this document. It is quite inconsistent with Ex.B.13 bunch of pahanies. At any rate, the name of the first respondent cannot be considered for the reason that he is not the purchaser from the alleged protected tenant by name K.Chandraiah @ D.Chandra Reddy. He failed to show that his vendors Smt.K.Indira Bai, N.Narasimha Reddy and N.Srinivasa Reddy are the original owners of the land in dispute. Above all the entries in revenue records cannot confer any title. The first respondent failed to trace independent title of his vendor. Therefore, his case must fail.

To substantiate the claim that the aforesaid Chandraiah @ Chandra Reddy was the protected tenant, the fourth respondent is very much relying upon Ex.B.12 true copy of the tenancy register. During the course of arguments in these two writ petitions, the certified copy of Ex.B.12 was produced before us. The said document was given in respect of survey number 427 and plot Nos.1 to 7 thereof. As can be seen from this document, the owner's name of the land was shown as Venkata Gunde Rao Lakshmi Narasimha Rao Janakamma. The tenants' names as shown therein are K.Chandraiah, Nomula Latchaiah,

etc. The learned Special Court doubted this document since the name of the original owner of the land Smt.Susheela Bai was not shown therein. A close scrutiny of this document shows that it pertains to the land covered by survey number 427 and plot Nos.1 to 7 thereof. It is not known from the record as to how many such sub-divisions are there in survey number 427 and whether survey number 427 was sub-divided into various plots or not. Sy.Nos.417/1, 425, 426 are independent survey numbers. They cannot be considered on the face of the record as the sub-division numbers of Sy.No.427, unless it is clearly explained with reference to record. When there has been no gainsaying that the original owner of the land in question is Smt.R.Susheela Bai who indeed filed an appeal challenging the order passed by the Tribunal granting ownership certificate under Section 38-E of the Act in favour of K.Chandraiah and others, in all probability Ex.B.12 should have contained the name of the said Susheela Bai. Perhaps, it may be a case where Ex.B.12 pertains to a land other than the land in dispute. At any rate, there has been no clear explanation forthcoming from the respondents as to how Ex.B.12 covers the land in dispute.

That apart, as can be seen from the application filed by the applicants before the Special Court, the land in dispute, as stated hereinabove, is covered by survey numbers 417/1, 425, 426 and 427. Ex.B.12 obviously does not cover the other survey numbers, namely, 417/1, 425 and 426. In respect of the land covered by these three survey numbers other than the survey number 427, there is no record on the side of the respondents to show that, that land covered by those three survey numbers were held in fact by K.Chandraiah as a protected tenant. Out of Acs.24.00 of land which is the land in dispute, the major part was covered by those three survey numbers. It is only six acres and odd that is shown to have been covered by survey number 427 as can be seen from Exs.A.1 to A.3 registered sale deeds executed by Smt.R.Susheela Bai. No correlation statement has been filed to show that the plot numbers mentioned in the second column of the document

are correlated to survey numbers 417/1, 425 and 426.

Obviously, K.Chandraiah and others claiming themselves to be the protected tenants applied to the Tribunal for granting ownership certificate. The certificate initially granted by the Tribunal was cancelled by the Joint Collector, as aforesaid, as can be seen from Ex.A.23. The said Chandraiah and others remained *ex parte* before the Joint Collector in the appeal. Ex.A.23 reads that the order passed by the Tribunal in favour of Chandraiah and others was without hearing the original owners, namely, Smt.R.Susheela Bai and Smt.G.Vijaya and in fact no notice was issued to Smt.G.Vijaya, the second appellant before the Joint Collector. Ex.A.23 does not *per se* show that Chandraiah and others were considered to be the protected tenants. It may be mentioned here that the applicants or as a matter of that Smt.R.Susheela Bai, who was examined as P.W.2, denied Chandraiah and others as protected tenants.

It is no doubt true that some of the pahanies filed on the side of the respondents show the name of Chandraiah as tenant but by such evidence it cannot be said that Chandraiah was the protected tenant. Obviously they are not the copies of the register of protected tenants which is separate than the pahanies. Section 34 of the Act defines the expression “protected tenant”. According to it, a person shall be deemed to be a protected tenant if he holds the land as a tenant continuously for a period of not less than six years in the Fasli years 1343 to 1352 or for a period of not less than six years immediately preceding the first day of January, 1948 or for a period of not less than six years commencing not earlier than the first day of Fasli year 1353 i.e. 06.10.1943 and completed before the commencement of the Act and has cultivated such land personally during that period. The Act seeks to define the expression ‘tenant’ under Section 2(v). According to this provision a tenant is a person who holds land on lease and includes a person who is deemed to be a tenant. Under Section 5 a person who is lawfully cultivating any land belonging to another person shall be deemed to be

a tenant. Whether a person is a tenant or deemed to be a tenant, such person cannot be automatically a protected tenant unless he comes within the parameters enjoined under Section 34 of the Act. Thus, the Act seeks to distinguish between a tenant and a protected tenant. It is thus obvious that a tenant or a deemed tenant cannot automatically be a protected tenant by virtue of his long standing possession.

De hors Ex.B.12, there is no documentary evidence to show the possession of the land by Chandraiah and others continuously for a period of six years preceding the year 1948. Ex.B.13-three extracts of pahanies are for the years 1956-57 onwards upto 1983-84. Obviously, they do not help in coming to a definite conclusion that possession of K.Chandraiah and others was continuously for a period of six years preceding the relevant date. In the event of any dispute as to whether a person is a protected tenant or not, under Section 35 of the Act that person shall apply within one year from the commencement of the Act to the Tahsildar for a decision on the question. It may be reiterated here that Smt.R.Susheela Bai is very much disputing the protected tenancy of K.Chandraiah and others. No decision as such is said to have been passed under Section 35 of the Act by the Tribunal in favour of the said Chandraiah. Therefore, as can be seen from Ex.A.23 when the matter is remitted to the Tribunal, the Tribunal must first consider as to whether Chandraiah was a protected tenant and after reaching such a conclusion, it must further consider as to whether ownership certificate shall be issued under Section 38-E of the Act in his favour. Merely because Ex.B.13 pahanies contain the name of late Chandraiah as cultivator, it cannot automatically be concluded that he was the protected tenant for the land in dispute.

True, that in the event of any dispute in between the land owner and the person claiming to be the tenant as to whether he is a protected or not, it is well within the domain of the Tribunal constituted under the Act to adjudicate and the Special Court cannot adjudicate the same. But when an application is filed by the persons claiming to be the owners

before the Special Court qua the respondents alleging them to be the land grabbers and the respondent takes up a plea that they are the purchasers from the protected tenants, so as to adjudicate the dispute in between the parties *inter se* in that application before the Special Court, it is open to see from the evidence as to whether really the respondents are the purchasers from the protected tenants. On the premise that the Special Court cannot declare Chandraiah and others as protected tenants, it cannot be precluded from considering as to whether Chandraiah and others are really shown to be the protected tenants or not by adducing relevant evidence.

When obviously Smt.Susheela Bai was claiming the lands as pattadar and in fact she filed the appeal before the Joint Collector questioning Section 38-E certificate issued in favour of Chandraiah, it is quite surprising as to why her name is not shown in the column of pattadar in Ex.B.13 pahanies. It is not even the case of the respondents that the original owners are those persons whose names have been therein. All these pahanies pertain to the years 1956-57 onwards. There is no other evidence showing the possession of the fourth respondent-purchaser from the said Chandraiah subsequent to his sale. Equally, there is no other evidence to show the possession of Chandraiah after 1983-84 till the sale in favour of the fourth respondent which was obviously in the year 1992. Ex.B.12, however, shows the names of Sri Venkata Gunde Rao, Lakshmi Narasimha Rao and Janakamma as pattadars. The names of Kondapuram Chandraiah and Nomula Latchaiah are undoubtedly shown as tenants but Ex.B.12 is only in respect of survey number 427 and plot Nos.1 to 7 thereof. This document does not speak anything about the other survey numbers 417/1, 425, and 426. This discrepancy shall have to be explained and is not explained. The learned Special Court declined to place any reliance upon this document. We see no compelling reasons to conclude that such a finding given by the Special Court is in any manner perverse, illegal or irregular.

The bone of contention of the fourth respondent seems to be that even under Ex.A.23 order the ownership certificate has been cancelled, it does not have the effect of cancelling the status of K.Chandraiah @ D.Chandra Reddy as protected tenant and once he continuous to be the protected tenant, the sale in favour of the applicants is void. The learned counsel appearing for the fourth respondent invites our attention to Section 38 of the Act. Section 38-E deals with the right of a protected tenant to purchase the land. It is in the nature of a right of pre-emption conferred on the tenant. The owner in the event seeks to sell the land must offer to the tenant in the first instance. There is nothing in the Section which invalidates the transaction of sale made in favour of a third party other than the tenant in violation of the provisions of Section 38-E. On the other hand, the second proviso to sub-section (7) of Section 38 of the Act specifically says that in the case of purchase of land by any person other than the protected tenant, the rights and interests of the said tenant in the lease land, shall continue as before. Therefore, the protected tenant continuous to be the protected tenant even if the land is sold by the owner in favour of a third party.

The learned counsel appearing for the fourth respondent seeks to place reliance upon a Judgment of the Apex Court in *KOTAIAH v. PROPERTY ASSOCIATION OF THE BAPTIST CHURCHES (PVT.) LTD.*[1]. That was a case where the appellants were in possession of certain agricultural lands as tenants and after the advent of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, they were recognised as protected tenants. Furthermore, the Government is said to have issued a notification on 01.10.1973 relating to the District where the lands in dispute are situate, Section 38-E of the Act whereunder the tenants have become the owners. It appears that the appellant therein had left the country long, long ago and the first respondent association claimed to have purchased the property and issued a notice of termination of tenancy to the appellants. Under those circumstances, it was held that the alienation made in contravention of the provisions in

favour of the first respondent had no legal effect. It is obviously a case where the protected tenants have become owners by virtue of the notification issued under Section 38-E of the Act.

Unlike it, in the instant case the fourth respondent has not yet become the owner of the land in dispute. The ownership certificate said to have been issued in his favour was set aside by the Joint Collector as can be seen from Ex.A.23 order. Therefore, the said decision has no application to the facts obtaining in the instant case. Here, in the instant case, the fourth respondent is not shown to be the protected tenant in respect of the entire land as discussed herein above. Ex.B.12 shows only a part of the land covered by survey number 427 alone. There is no evidence to show that K.Chandraiah @ D.Chandra Reddy was a protected tenant in respect of the land covered by other survey numbers, namely, 417/1, 425 and 426 which constitutes major chunk of the land in dispute. As can be seen from Ex.B.13-bunch of pahanies, the owners in respect of the land in dispute are shown as Venugopala Rao, Sudharshan Rao, Tulasamma and Lakshmi Narasamma. It is not even the case of Chandraiah that he was a tenant under them. On the other hand, he did not deny the ownership of Smt.R.Susheela Bai either in the counter *inter alia* or in his evidence. That casts a shadow of doubt on the veracity of Ex.B.12. There is no clinching evidence available on record to show that Chandraiah was the protected tenant in respect of the whole of the land in dispute or at least that part of the land covered by survey number 417/1. There is the claim of the first respondent in respect of a part of the land covered by survey number 417/1. He claims that Smt.Indira Bai was the owner. This inconsistency in the claims of the first and fourth respondents, remains unexplained. That further strengthens the doubt in respect of the alleged protected tenancy of Chandraiah even in respect of the land covered by survey number 417/1. For all these reasons, it is not at all safe to place reliance upon Ex.B.12.

Sri V.L.N.G.K. Murthy, learned counsel appearing for the

applicants, seeks to contend that the right of pre-emption is not transferable. To buttress the said contention, he places reliance upon a Judgment of the Apex Court in *BHOOP ALLEGED S/O SHEO v. MATADIN BHARDWAJ*[2]. The Apex Court held that the right of pre-emption may be founded in statute or custom or personal law by which the parties are governed and the sole object of conferring this right is to exclude strangers from acquiring interest in an immoveable property as a co-sharer or to keep objectionable strangers away from the neighbourhood and this right is purely personal and cannot be transferred to a third party for the obvious reasons that it would defeat the very purpose of its conferment.

Even assuming for a moment that Chandraiah @ Chandra Reddy to be the protected tenant, albeit the ownership certificate issued in his favour was cancelled by the Joint Collector under Ex.A.23 order, tenancy right being only heritable, he cannot alienate his interest in the land in dispute in favour of third parties. Although there is no prohibition of alienation under the Act, Section 48-A shows that a tenant cannot alienate permanently the land although he has acquired the right of ownership either under Section 38-C or Section 38-D or Section 38-E of the Act without the period of 8 years being elapsed from the date of such acquisition. What at best the fourth respondent can purchase from Chandraiah @ Chandra Reddy is the alleged protected tenancy right of Chandraiah but not the ownership right. In view of the Judgment of the Apex Court (referred to supra 2), the pre-emptive right cannot be alienated by the tenant and there is no provision in the Act which enables the protected tenant which right is heritable to alienate that right in favour of a third party. Therefore, the fourth respondent cannot even claim to have stepped into the shoes of Chandraiah as a protected tenant by means of a sale under Exs.B.6 and B.8 sale deeds.

The rival title thus set up by the fourth respondent has not been convincingly proved in the instant case. The possession of the fourth respondent vis-à-vis the applicants can, therefore, be called as unlawful

and illegitimate. For the above reasons, we see no illegality or material irregularity that has been committed by the learned Special Court under the impugned Judgment. Consequently, the Writ Petition No.19911 of 2006 filed by the fourth respondent shall have to be dismissed.

In the result, the Writ Petition No.19911 of 2006 is dismissed and the Writ Petition No.19940 of 2006 is also dismissed. But, under the circumstances, there shall be no order as to costs.

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(T.CH.SURYA RAO,J)

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(G.CHANDRAIAH,J)

Dated 29-08-2007

VGSR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NOS.19911 AND 19940 OF 2006

(Per TCSR,J)

DATED _____

G.Indira W/o G.Anand Reddy,
Aged 42 years, R/o Bowenpally,
Secunderabad. And Another … Petitioners

v.

The Special Court under A.P. Land 3
Grabbing (Prohibition) Act, Hyderabad,

Represented by its Registrar. And Others ...

Respondents

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[1] AIR 1989 SC 1753

[2] AIR 1991 SC 373